HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No. 12901 of 2003

Between:

Smt. Khairunnisa Begum

.....**Petitioner**

And

The Government of Andhra Pradesh,
rep. by its Secretary, Revenue (FF-I) Department,
Secretariat, Hyderabad.

.....**Respondent**

:: O R D E R::

Counsel for the Petitioner : Sri J.M.Naidu

Counsel for the Respondent : Government Pleader for Revenue

5th September, 2006

Smt. Khairunnisa Begum wife of late M.A.Rahman has filed this petition for quashing order dated 18-1-2003 vide which the State Government rejected her claim for grant of State Freedom Fighters Pension with effect from 6-3-1978. She has further prayed for issue of a mandamus to the respondents to pay pension to her with effect from 10-11-1977 or at least with effect from 6-3-1978.

The petitioner's husband late M.A. Rahman was detained in September, 1947 on account of his having participated in subversive activities against the Government of Nizam. He submitted application dated 10-11-1977 for grant of freedom fighters pension under the scheme framed by the State Government. The concerned authority i.e., Assistant Secretary to Government of Andhra Pradesh, Revenue Department got conducted an enquiry through Tahsildar, Charminar Taluq, but no decision was taken on his entitlement to get pension. He filed Writ Petition No.23847 of 1996 for issue of a direction to the respondent to pay him pension. The same was disposed of by the learned Single Judge on 16-1-1997 with a direction to submit an appropriate petition before the concerned authority through the State Government along with the relevant material to substantiate his claim with a further direction that the concerned authority shall decide his claim within eight weeks of the receipt of recommendations from the State Government. Accordingly, late M.A. Rahman submitted application to the concerned authority along with copies of necessary documents. After the death of her husband on 7-2-1998, the petitioner represented to the respondent for grant of pension. By an order dated 28-3-1998, the State

Government provisionally sanctioned freedom fighters family pension to the petitioner under the State Scheme. She then filed Writ Petition No.5097 of 2001 for issue of a direction to the respondent to grant her pension with effect from the date of application made by her husband or at least with effect from 6-3-1978. That petition was disposed of by the learned Single Judge with a direction to the respondent to dispose of her representation dated 31-10-2000. As regards the petitioner's prayer for grant of pension under the 1980 Scheme, the learned Single Judge gave liberty to the petitioner to pursue her cause with the Central Government authorities.

In compliance of the aforementioned direction, the State Government passed the impugned order whereby the petitioner's claim for grant of freedom fighters family pension with effect from 6-3-1978 was rejected.

The petitioner has relied on orders dated 30-1-1989 and 19-4-1991 vide which the State Government sanctioned freedom fighters pension to Sri Pedaballi Bala Yella Reddy and Sri P.Veera Reddy with retrospective effect and pleaded that the impugned order is liable to be declared as discriminatory and quashed on the ground of violation of Article 14 of the Constitution. She has also relied on order dated 26-9-1986 passed by this Court in Writ Petition No.3659 of 1986 **Yada Ramulu and another v. The Government of Andhra Pradesh** and prayed that similar relief be granted to her.

In the counter affidavit filed on behalf of the respondent by Sri Ch. Keerthi Kumar, Deputy Secretary to Government, Revenue (FF) Department, it has been averred that orders for retrospective payment of pension to Sri Pedaballi Bala Yella

Reddy and Sri P. Veera Reddy were issued in view of the specific directions given by the High Court. According to the deponent, the petitioner is not entitled to retrospective pension in view of the judgment of the Supreme Court in **Gurdial Singh v. Union of India**[1]. According to Sri Ch.Keerthi Kumar, the petitioner has not produced substantive documentary evidence about the imprisonment of her husband and the jail certificate produced by her cannot be relied for accepting her claim for retrospective grant of pension.

I have heard learned counsel for the petitioner and the Government Pleader for Revenue and scrutinized the record.

Annexure P-1 filed with the affidavit of the petitioner is the copy of Register No.6 issued by Superintendent, Central Prison, Hyderabad on 14-4-1977. A perusal of this document shows that M.A.Rahman was admitted in the prison on 22-9-1948 Fasli under Section 2 of the Public Safety Act. The certificate further shows that after about one month and half, the detenu was transferred to Camp Jail, Jalna on administrative grounds. In her affidavit, the petitioner has categorically stated that her husband remained in jail from 8-11-1947 to 8-11-1949. In his counter affidavit, Sri Ch.Keerthi Kumar has neither questioned the genuineness of Annexure P-1 nor he has controverted the assertion contained in paragraph 2 of the petitioner's affidavit that her husband remained in jail from 8-11-1947 to 8-11-1949. Therefore, the reason assigned by the respondent for not entertaining the petitioner's claim for retrospective grant of pension under the State Scheme cannot but be declared as irrelevant and extraneous and the order impugned in the writ petition is liable to be quashed.

There is another reason for entertaining the petitioner's

claim. In the counter affidavit filed on behalf of the respondent, it has not been disputed that in furtherance of orders dated 6-7-1988 and 26-4-1989 passed by this Court in Writ Petition Nos.9974 and 19326 of 1988, Sri Pedaballi Bala Yella Reddy and Sri P. Veera Reddy were sanctioned freedom fighters pension with retrospective effect from 6-3-1978. This being the position, there does not appear to be any valid ground or justification to deny the benefit of retrospective grant of pension to the petitioner. The judgment of the Supreme Court in **Gurdial Singh**'s case (supra) and order dated 20-11-2001 in Writ Petition No.1733 of 2001 (**Kalineni Venkamma v. State**) on which reliance has been placed for denying relief to the petitioner are clearly distinguishable. The facts of **Gurdial Singh**'s case were that the application made by him on 13-3-1973 for grant of pension under the Freedom Fighters Pension Scheme, 1972 on the ground that he had worked as driver in the Indian National Army raised by Netaji Subhash Chandra Bose was rejected by the Government of India. In a writ petition filed by him in 1996, the High Court directed re-consideration of his case. Thereafter, by an order dated 29-4-1998, Government of Punjab granted him provisional Swatantrata Samman Pension with effect from 25-4-1998. In addition to that, the Government of India granted him provisional pension with effect from 29-4-1998. He then filed another petition for grant of pension with effect from 13-3-1973. However, instead of granting further relief, the Government of India cancelled the order by which pension had been granted to him. He unsuccessfully challenged this action before the High Court. On appeal, the Supreme Court ruled that the standard of proof required in deciding the petitioner's claim for pension by being

treated as a freedom fighter is not similar to the one required in a criminal case and the competent authority is required to decide the claim on the basis of the probabilities. The Supreme Court then observed that the contradictions and discrepancies mentioned by the respondents were not serious enough to warrant rejection of the appellant's claim. Accordingly, a declaration was made that the appellant is entitled to pension. However, keeping in view the lapse of time and the facts of that particular case, the Supreme Court granted relief to him from March, 1996 when he filed the first writ petition. In **Kalineni Venkamma**'s case (supra), the Division Bench declined relief of retrospective pension because the claimant had failed to produce documentary proof in support of her claim for grant of pension.

In the case before me, the petitioner has produced substantive evidence to show that her husband was detained in connection with Hyderabad Liberation Movement. Therefore, her case is squarely covered by the judgments of this Court in Writ Petition Nos.9974 and 19326 of 1988 and she is entitled to pension with retrospective effect from 6-3-1978.

In the result, the writ petition is allowed. The respondent is directed to sanction pension to the petitioner under the State Scheme with effect from 6-3-1978. The needful be done within a period of one month from the date of copy of receipt of this order. The arrears of pension be paid to the petitioner within next two months. If the respondent fails to pay the arrears of pension within a maximum period of three months from the date of receipt of copy of this order, then the petitioner shall become entitled to get interest at 6% per annum with effect from the date of this order.

G.S. SINGHVI, C.J.

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[1] **(2001) 8 SCC 8**